6 January 1948

Chief, Services Branch

Office of the General Counsel

Transfer of Property between Government Agencies

1. Introduction.

a. Your memorandum concerning the transfer of property from the Federal Communications Commission to the Central Intelligence Agency requests that a decision be rendered as to the authority for the transfer of property from the FCC to CIA without an exchange of funds. Your request necessarily raises the question of agency status at the time of the transfer of the property from SSU to CIG and requires, in addition, a consideration of CIA as the authorized and ultimate holder of property acquired from other government agencies.

2. Consequences of Property Transfer Prior to the Surplus Property Act of 1944.

a. Although the decisions generally referred to by you are concerned more with the transfer of surplus used property from one recognized government department to another than with property reconciliations resulting from executive reorganizations, a resume of the decisions is considered.

b. With regard to your specific question, you are advised that there is no legal objection to the mere transfer from one bureau or department of the Government to another department, of property no longer required for the purposes for which it was appropriated. Such a transfer is not considered to be a sale and is not open to the objection that public property cannot be disposed of without the authority of Congress. (35 O.A.G. 245.) The opinion cited was confined to a consideration of the authority for transfer, and questions of reimbursement between appropriations were not discussed.

c. A subsequent decision affords more light on the question of adjustment between appropriations arising from the transfer of supplies or equipment no longer needed by the transferor department. One department had purchased equipment which was no longer required, but which could be used by another department. That such a transaction is not a sale was recognized by the Comptroller of the Treasury, (25 Comp. Dec. 961), when he held that where equipment is transferred from one government department to another, payment to the transferor department is not authorized since the transaction is not a sale. The Comptroller also added that no adjustment of appropriations is required where the expenditures, from the appropriations which have the original expense, have accomplished the purposes for which they were made. Such a transfer without additional expense involves a mere question of accountability

and not an adjustment of appropriations.

d. However, in 17 O.A.G. 480, the Attorney General pointed out that a transfer of property for administrative expediency, although not a sale, may involve not only a transfer of property, custody, and accountability, but a transfer of cost from one appropriation to another.

e. With respect to property transfers involving reimbursement, it can be stated that the transfer of public property from one department to another, and the reimbursement of the appropriation from which originally purchased by a transfer of moneys from the appropriation for the object for which the property is to be used, has been recognized by long practice and is often economical and advantageous. Such a transfer is not a sale within the meaning of Section 3618 of the Revised Statutes, and it is not required that the moneys received therefor shall be covered into the Treasury as miscellaneous receipts. But reimbursement is made, and the moneys so received are repaid to the appropriations from which the property was originally purchased, in order that such transfers may not be in contravention of Section 3678 of the Revised Statutes, which provides that all funds appropriated for the various branches of the public service shall be applied solely to the objects for which they were respectively made. (12 Comp. Dec. 668; 14 Comp. Dec. 641; and 21 Comp. Dec. 819 support the foregoing.)

f. The firmness of the above principles is demonstrated by an interpretation of the Act of July 11, 1919, 41 Stat. 132, by the Comptroller of the Treasury. The Act provides:

> "The interchange, without compensation therefor, of military stores, supplies, and equipment of every character, including real estate owned by the Government, is hereby authorized between the Army and the Navy upon the request of the head of one service and with the approval of the head of the other service."

The Comptroller held that the Act did not contemplate a department's transferring its property to another department where that action would put the transferor department to the expense of procuring other property to replace that transferred.

3. Consequences of Property Transfers Subsequent to the Surplus Property Act of 1944.

a. Section 12(c) of the Surplus Property Act of 1944 provides as follows:

> "The disposal agency responsible for any such property shall transfer it to the government agency acquiring it at the fair value of the property as fixed by the disposal agency, under regulations

prescribed by the Board, unless transfer without reimbursement of funds is otherwise authorized by law."

b. As far as the transfer of surplus property between government agencies is concerned, Section 12 (c) of the Act appears to have overruled or superseded the cited decisions. On the other hand, where the property involved is not surplus to the needs or responsibilities of the owning agency, it appears that a transfer may be effected under the authority contained in the decisions of the Attorney General, though it is not clear that the type of transfer consummated was one which would fall within the nonreimbursable category. However, in view of the statement contained in the succeeding paragraphs, it is not considered necessary to develop this point any further; namely, whether the property concerned was surplus in fact or technically surplus due to executive reorganizations.

4. Property Transfer under Stated Circumstances.

a. The reasoning of the Attorney General and other authorities has been based on voluntary transfers of property between government departments and not on transfers of property occasioned by a transfer of functions, personnel, records, facilities, etc. arising out of executive reorganization, consolidations, or eliminations.

b. This office does not consider the acquisition of property by SSU from OSS and CIG-CIA from SSU to involve an application of the ordinary rules covering the transfer of property between government departments. A proper evaluation of our position arises only from a consideration of the CIA genesis which we feel would support a conclusion that Congress manifested no intention that the donor agencies be reimbursed for the property in the possession of CIG at the time the National Security Act of 1947 was passed. A summary review of the OSS-CIA history is therefore considered pertinent.

c. Executive Order 9621, dated 20 September 1945, terminated the Office of Strategic Services, and certain of the functions, personnel, records, etc., were transferred to the Secretary of War, where a Strategic Services Unit was created. By Presidential Directive, dated 22 January 1946, the President directed the respective heads of State, War, and Navy to assist in the establishment of a Central Intelligence Group under a Director of Central Intelligence, responsible to the National Intelligence Authority. Pursuant thereto, the Acting Secretary of War, by memorandum, dated 3 April 1946, directed the Director of the Strategic Services Unit to make available any facilities and services of the Strategic Services Unit which might be useful in the performance of an authorized function of the Central Intelligence Group. Thereafter, and in accordance with paragraph 5 of N.I.A. Directive No. 5, dated 8 July 1946, property, supplies, and equipment were transferred by the Strategic Services Unit, War Department, to the Central Intelligence Group.

d. What the character of this transfer was, depends to a large extent on the status of the acquiring entity. As you may have surmised, the status of CIG as a strictly de jure agency has occasioned some inquiry, though its existence as a composite entity, vested with apparent agency characteristics, because of its receiving the advantages of group contribution in the form of property, personnel, records, etc., appears defensible. This position is consistent with the original conception of CIG. Thus, we would appear to be on firm ground in maintaining, should the question ever arise, that CIG was a mere holding activity from the property accountability standpoint. CIG, having been created by Executive Directive, could be likewise terminated, in which case, it is apparent that the property in the possession of CIG would have reverted to the original owning agency.

5. Conclusion.

FOIAb5 [redacted]

6. Recommendations.

a. It is the understanding of this office that a reconciliation of the FCC inventory and CIA inventory has not been achieved due to the variances in nomenclature, quantities, and the absence of satisfactory records from CIA predecessors; namely, STATSPEC [redacted]

STATSPEC [redacted]

STATSPEC [redacted] this office perceives no legal objection to a general acknowledgment of property receipt by CIA on the assumption that a satisfactory reconciliation, or other appropriate administrative measures, can be effected on a basis consistent with the expressions contained herein.

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